

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

TERESA I. WILSON	:	CIVIL ACTION
	:	
v.	:	NO. 05-6667
	:	
JO ANNE B. BARNHART,	:	
Commissioner of Social Security	:	

MEMORANDUM AND ORDER

AND NOW, this 12th day of September, 2006, upon consideration of the cross-motions for summary judgment filed by the parties (Doc. Nos. 10 and 11) and the reply thereto (Doc. No. 12), the court makes the following findings and conclusions:

1. On April 26, 2004, Teresa I. Wilson ("Wilson") protectively filed for disability insurance benefits ("DIB") and supplemental security income ("SSI") under Titles II and XVI, respectively, of the Social Security Act, 42 U.S.C. §§ 401-433, 1381-1383f, alleging an onset date of June 3, 2003. (Tr. 40-42; 15 ¶ 1).¹ Throughout the administrative process, including an administrative hearing held on January 20, 2005 before an administrative law judge ("ALJ"), Wilson's claims were denied. (Tr. 5-7; 12-22; 23-29). Pursuant to 42 U.S.C. § 405(g), on December 21, 2005, Wilson filed her complaint in this court seeking review of that decision.

2. In his decision, the ALJ concluded that the impairments of which Wilson complained, including discogenic and degenerative disorders of the back and anxiety disorder, were severe. (Tr. 15 ¶ 1; 16 ¶ 2; 21 Finding 3). However, the ALJ further concluded that Wilson's impairments did not meet or equal a listing, that she retained the residual functional capacity ("RFC") to perform unskilled, light or sedentary work, involving limited public contact and no detailed instructions, and that she could perform her past relevant work as a receptionist and, thus, was not disabled. (Tr. 16 ¶ 3; 20 ¶ 1; 21 Findings 5, 6-7, 10).

3. The Court has plenary review of legal issues, but reviews the ALJ's factual findings to determine whether they are supported by substantial evidence. Schaudeck v. Comm'r of Soc. Sec., 181 F.3d 429, 431 (3d. Cir. 1999) (citing 42 U.S.C. § 405(g)). Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Richardson v. Perales, 402 U.S. 389, 401 (1971) (quoting Consol. Edison Co. v. NLRB, 305 U.S. 197, 229 (1938)); see also Dobrowolsky v. Califano, 606 F.2d 403, 406 (3d Cir. 1979).

4. The decision by the ALJ is legally insufficient. As a result, the case must

¹ All numbered paragraph references to the ALJ's decision begin with the first full paragraph on each page.

be remanded to the ALJ for correction. The ALJ found that Wilson could perform her past relevant work as a receptionist, apparently as she had performed it, and, thus, found that Wilson was not disabled. (Tr. 20 ¶ 2). However, the ALJ failed to make explicit findings regarding the mental demands of her past work which is required under the law. Burnett v. Comm. of Soc. Sec. Admin., 220 F.3d 112, 120 (3d Cir. 2000) (stating that “the ALJ must make findings of the physical and mental demands of the claimant's past relevant work”); SSR 82-62 (stating that “[i]n finding that an individual has the capacity to perform a past relevant job, the determination or decision must contain among the findings the following specific findings of fact . . . [a] finding of fact as to the physical and mental demands of the past job/occupation”). Defendant does not proffer any meaningful argument for why the ALJ failed to follow this legal requirement. The ALJ did state that Wilson testified that she only left her prior job because she was let go and not because she could not perform the work. (Tr. 20 ¶ 1). Perhaps this is the reason that the ALJ failed to properly address the demands of Wilson’s prior work. If so, I find that this is not an adequate reason to disregard the legal requirements.

Wilson also contends that if the ALJ instead found that Wilson could perform her past relevant work as it is generally performed, his assessment is flawed due to a conflict between the dictionary of occupational titles (“DOT”) and his RFC determination. In the DOT, the job of receptionist is semi-skilled with a reasoning level of three. See DOT at 237.367-038. Both of these requirements are at odds with the ALJ’s RFC assessment that Wilson could only perform unskilled work involving limited public contact and no detailed instructions. (Tr. 20 ¶ 2). Defendant merely contends that this argument is irrelevant since the ALJ found that Wilson could work in her previous occupation as performed. Because the ALJ’s assessment of Wilson’s prior work is legally flawed, I find that this argument is relevant and I further find that there is an apparent discrepancy between the requirements for a receptionist under the DOT and Wilson’s RFC.

Finally, I note that defendant concedes that the ALJ erred in finding in the alternative that even if Wilson could not perform her past relevant work, under the grids, she was not disabled. See Appendix 2, Subpart P, of Regulations No. 4. Because Wilson has non-exertional impairment, the ALJ may not rely solely on the grids at step 5. Green v. Schweiker, 749 F.2d 1066, 1072 (3d Cir. 1984); Wallace v. Sec. of Health and Human Servs., 722 F.2d 1150, 1155 (3d Cir. 1983).

As a result, on remand, the ALJ shall re-assess Wilson’s ability to work as a receptionist as she had performed that job in the past relying on the appropriate legal standards. If the ALJ makes further determinations regarding her ability to work as a receptionist as it is generally performed or her ability to perform other jobs in the marketplace, he shall employ an vocational expert to aid in his decision making.

Upon careful and independent consideration, I find that the decision by the ALJ is not legally sufficient. As a result, the action must be remanded to the Commissioner under sentence four of 42 U.S.C. § 405(g). Therefore, it is hereby **ORDERED** that:

5. The motion for summary judgment filed by Teresa I. Wilson is **GRANTED** to the extent that the matter is **REMANDED** for further proceedings consistent with this order and **JUDGMENT IS ENTERED IN FAVOR OF TERESA I. WILSON AND AGAINST THE COMMISSIONER OF SOCIAL SECURITY;**

6. The motion for summary judgment filed by the Commissioner is **DENIED;** and

7. The Clerk of Court is directed to mark this case closed.

LOWELL A. REED, JR., S.J.